

**ZONING BOARD OF ADJUSTMENT  
JANUARY 6, 2016 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, and James Monahan. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**48-15 Brad Rhodes – Signart Inc., for Rite Aid Real Estate:** Applicant requests Variances to Article 28-6-9 (a), Table of Maximum Sign Dimensions & (b), Permitted Building Signs to install 3 additional building signs (with a combined additional area of 20.31 SF) on both the south and the east building façade for a total of 5 signs on each façade with a total combined area of 59.65 SF when a maximum of 3 signs per façade with a combined area of 40 SF per façade is permitted for property at 92 South Street in a CN Neighborhood Commercial District

Prior to hearing this appeal, the Board must determine whether the request differs materially in nature or degree, or whether the circumstances affecting the property have changed significantly when compared with the circumstances existing under the request in case #24-15, Brad Rhodes for Rite Aid Corp. & Sign Art Inc., September 2, 2015.

Prior to hearing this appeal the Board needed to hear testimony as to why this should be considered a different appeal. Brad Rhodes testified. Walker supplied the Board with a comparison of the proposal under Case #24-15 and the proposal under the current case. In case 24-15, the GNC, drive thru and pharmacy signs were all combined into one cabinet whose dimensions defined the size of the sign. In the new submission the appellant reduced the letter size from 11" to 9" and placed the signs on separate cabinets. Carley asked if the logo (shield) and Rite Aid letters were already installed. Mr. Rhodes said yes. Winters asked if the comparison from the old case to the new case is that they both include 5 signs but it is different in square footage. Mr. Rhodes said yes.

A motion that this is a new case was made by Marshall, seconded by Monahan and passed by a unanimous vote. The Board made their determination, based on Mr. Rhodes' testimony that the proposal is significantly different.

Brad Rhodes testified further. There is a drive thru at this facility which cannot be seen from the road. The drive thru copy on the building will be put there for visibility. Rite Aid is a pharmacy. GNC is a store within a store. GNC leases an area within that store for just their product. They need signage. Carley asked about the property itself. Mr. Rhodes stated that this is a CN zone and it is over an acre in area with a building that is 3-4 times larger than any other business in that district. That makes this property unique for the Zone it is in. Winters asked if the total square footage is less than the last proposal. Mr. Rhodes said it was. Walker said the actual surface area in the previous request was 201 s.f. This request is for 119 s.f. There is a reduction of the signage.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to grant the request was made by Marshall, seconded by Winters and passed by a unanimous vote.

Carley stated that the lot is unusual in size. Marshall said that the building is unusual in its size. This is less of an impact than the previous request. It provides a service to public.

**50-15 Roy Philbrick:** Applicant wishes to develop a property within the FEMA 100 year Contoocook River floodplain for a single-family detached dwelling (Use A-1) and requests variances to:

- 1) Article 28-3-2(d)(2), Uses Prohibited in the One Hundred (100) Year Floodplains and the F1 Districts, Section a., to permit the construction of a dwelling unit or building designed for residential purposes where such use is not permitted,

- 2) Article 28-3-2(d)(2), Uses Prohibited in the One Hundred (100) Year Floodplains and the F1 Districts, Section d., to install a well which is intended as a source of potable water,
- 3) Article 28-3-2(f)(2) & (3), to permit a building to be constructed in a One Hundred (100) Year Floodplain without being served by municipal water and sewer,  
All for property located at 92 Runnells Road in an RO Residential Open Space District.

Roy Philbrick testified. Michael Lambert representing Mr. Philbrick also testified. Mr. Lambert submitted additional illustrations to the Board.

Mr. Lambert stated that Mr. Philbrick had James Smith LLS survey the property. He ran elevation data with US Army Corp of Engineer so the topography on the plan is accurate. Plans are accurate to 1 foot. There is a provision in the F1 to allow septic systems. He spoke with Mark Mosure of Henniker, a licensed Engineer. The systems are sealed and underground. The property has had zoning complaint issues prior to Mr. Philbrick's purchase. Right now there is an electrical service kiosk with a concrete pad and an outhouse on the property. There is access to the river. There is a 4000 s.f. parking area adjacent to the road. These are unique features of property. They want to put an artesian/drilled well on the site. It is capped and has a steel casing. Because it is sealed there is no chance of contamination by flood waters. Carley asked for a summary of why they should be granted relief. Mr. Lambert stated that they will balance the cut with fill. They have submitted a contour plan. There is a proposed septic system. There will be no increase in flood heights. No threat to public safety. 28-3-2g requires that buildings permitted in the flood zone be 1 foot above the 100 flood elevation. There are not provisions in the Ordinance to allow a septic system to be built in the 100 year flood. The site will have special insurance i.e. Flood Insurance. There will be no increase in discharge. They are replacing the 4000 s.f. parking area with a driveway with impermeable surface. This is the minimum request. They want to build a 2 bedroom home. The hardship is due to the special conditions of the property which make it unique. It's not a subdivision. It's a pre-existing lot of record. Carley asked if it had ever had a building on it. Mr. Lambert stated that it had not. There was just a travel trailer there. They will remove the outhouse and the electrical service kiosk. There is no fair and substantial relationship because even with the flood events of the past there doesn't appear to have been any public safety issues or problems. He submitted copies of the FEMA Flood maps and there are 4 other homes within 1000 feet of the property. The property was created, he assumes, for a single family home. It wouldn't be against the spirit of the Ordinance to allow a single family home. Substantial justice will be done by granting it. Again, it is a lot of record. The surrounding properties would not be diminished as they are going to get rid of the outhouse and electrical panel. They will add plantings. It may increase property value as it would be another single family home vs. a recreational area.

Monahan asked if he (Philbrick) owns the property. Mr. Philbrick stated that he did. He has owned it a year and a half. Marshall asked about the concrete foundation and the flood plain elevation. Mr. Lambert stated that the foundation will be one foot above it. The north side of foundation is open. They will have a full concrete wall with an open basement. Marshall asked if the top of the wall is not the floor of the basement. Mr. Lambert said it was not. Winters asked about the 4 houses currently in the flood plains; were they preexisting or granted by variance. Mr. Lambert stated that he was pretty sure they were preexisting.

In favor: none.

In opposition: Lloyd Nobel of 52 Runnells Road. He stated that the Flood Plain is also the water shed for the water supply. He asked what the acreage of that lot was. Mr. Lambert stated that it was 1.41 acres. Mr. Nobel stated that Runnells Road is zoned for 2 acres lot. He feels those things should be taken into consideration.

Steve Domenici, 71 Runnells Road. That property has a lot of wetlands. Carley said that the wetlands were noted on their plans. Mr. Philbrick had a soil scientist and wetland scientist look at the property. He is building outside of the wetlands. Walker stated that Mr. Philbrick does have an application in for a Conditional Use Permit through the Planning Board.

Code: Walker stated that when subdividing a new piece of property in RO zone you need to start with 2 acres of land. This is an existing lot of record and it can be built upon as long as they can meet the minimum setback requirements. Carley asked if it was considered flood plain or floodway. Walker stated that it would be considered flood plain. Carley asked what could be built there. Walker answered: nothing.

Rebuttal: none.

Carley reviewed what the Board heard during the testimony. Carley asked Walker about provisions of the variance criteria that speak to the issue of Flood Plain. Is it intended to imply that they can build if they can prove all these things or not? Walker noted the purpose of the flood plain. Carley stated that his understanding was that the Ordinance was to prevent construction of certain kinds of building in the flood plain.

Carley also stated that this request concerned him. Normally they need to find there is no increase in hazard or detrimental effect to anyone else and he doesn't think they can find it here. The Ordinance says they don't want people building houses in the flood plain. He doesn't see anything in the appeal that addresses the reason why this rule is in place. It's in a flood plain; there is no house on the property. In the past the Board has found that they can improve an existing home, etc. Here that isn't the case. It is an empty lot. He appreciates their efforts to respond to the flood plain requirements. He didn't hear anything that suggested the regulation was misapplied here.

Winters agreed with Chris. But the lot seems to be specifically designed for a single family home. Would that be a basis for a hardship? There are other lots in the area that have single family homes on them. Marshall asked if the property were subdivided prior to the Ordinance adoption. Walker stated that this property was subdivided a very long time ago, before regulations were enacted. Monahan asked if the hardship was that it was located in a flood plain. Carley stated that the hardship was that he can't use the lot for anything. Marshall felt it was a reasonable use of the lot. Winters stated that the Ordinance has defined a residential home as not a reasonable use in a flood plain. Marshall weighs that against all the efforts they are making to conform to all the other requirements. This was a lot created prior to the zoning Ordinance. Monahan noted that one of the witnesses said others have tried to put a single family home there. What is the history there? Walker said he had no knowledge of this. Monahan said that the Board had approved additions to turn camps into year round homes. Carley said that he did recall one case where the camp had been there for some time and the owners wanted to improve it into a year round home. The Board granted that because prohibiting the upgrading of an existing house would create a hardship as defined by the ordinance. Here that's not the same situation. Wallner is hung up on the reasonable use. He feels they are being denied a reasonable use. Monahan asked Walker what the next step was if this was granted. Walker stated that they would go to Planning and they would need to apply for a DES permit (for septic).

DECISION: A motion to approve all 3 requests was made by Wallner, seconded by Marshall and passed by a 3-2 vote with Winters and Carley in the minority.

**51-15 Stephanie & Brad Newbery for Ripley Street Management:** Applicant wishes to open a personal training facility (privately own indoor health and fitness center, use C-4) and requests the following variances to:

- 1) Article 28-7-2(e), Table of Off-Street Parking, to provide 36 parking spaces where 48 spaces are required;
- 2) Article 28-7-7(h), Surfacing and Drainage, to permit 18 of the 36 parking spaces to be on a gravel surface in lieu of a paved surface;
- 3) Article 28-7-7(i), Curbing and Guardrails, to waive the requirement for curbing around the perimeter of the parking areas;
- 4) Article 28-7-10(a), Parking Lot Perimeter Landscaping Required, to maintain existing conditions and not provide additional 5' perimeter landscaping around the entire perimeter of the parking lot;
- 5) Article 28-7-14, Off-Street Loading Area for Refuse Containers, Section (e), Screening of Refuse Containers, to waive the fence and landscaping requirements for refuse containers, for property located at 1 Ripley Street in an IN Industrial District.

Brad & Stephanie Newbery testified. Ian Butman, Manager of the facility, also testified. They are located at 12 Chenell Drive right now. They have been in business for 10 years. This would be their 4<sup>th</sup> location. White Mountain Crossfit is a small family run business. It's a training facility. It was established in 2009. They work with boys and girls club, etc. They hold afternoon and evening classes; 7-8 classes. Saturdays they are open 4 hours and closed on Sunday. It's an approved use within the IN zoning district. They need parking relief. They do not need the number of spots required. There are 18 spaces existing there now that are paved. They have a graveled area that could handle another 18 spaces. During July 2015 a parking study was done of their business showing at peak the demand would be 22 spaces needed. They have a client base of about 120 people. They hope to grow. But it would be a slow increase in the client base. The demand for spaces would only increase slightly. They do not need 48 spaces. There are no public safety issues. This lot would supply ample area for his clients and themselves.

Carley asked about their hours of operation. Mr. Newbery stated that the hours would be as follows: 6 am on Monday, Wednesday, Friday; 7 am on Tuesday and Thursday. They would close down at 10 am 5 days a week and open again for lunch time classes Monday, Wednesday and Friday and have 4-7 pm classes. They are closed after 7 pm. Carley what was the previous use? Mr. Newbery stated that it was a metal fabrication facility.

There is a hardship if they had to screen the refuse containing area as they have very little trash from the facility.

Marshall asked if the Ordinance required a dumpster. Walker stated that it is a change of use and they must provide a place to locate a dumpster. Marshall asked Mr. Newbery if they did not plan on having a dumpster. Mr. Newbery stated that they do not. Monahan asked what they had for square footage now vs. what they would have. Mr. Newbery said they had 5,000 s.f. and they will have 8,000 s.f. above ground and 3,000 s.f. below ground. Monahan asked if the building had a basement. Mr. Newbery said yes.

Marshall asked about curbing. Is there any curbing on the existing paved lot? Mr. Newbery said there was none. Marshall asked Walker what the purpose of curbing was. Walker answered to handle rain runoff and to prevent vehicles from driving off the pavement. Marshall asked if they could use concrete wheel stops. Walker said they could. Monahan asked why they did not want to include curbing. Mr. Newbery said that the lot is suitable as is. Mr. Butman stated that the true buffer would prevent any damage to abutting properties. Marshall asked Walker about the 5 foot perimeter landscaping requirement. Walker stated that there is a lot of landscaping (trees etc.), informal as it may be, on the lot now but it does not meet the standards of the ordinance. A more formalized landscaping is required around the entire parking area.

Carley asked Walker if the previous use was non-conforming. Walker stated it was an allowed use. Monahan asked if there were sidewalks on Ripley Street. Mr. Butman stated that there are sidewalks on Airport Road but not on Ripley Street. Winters asked if a manufacturing facility has the same parking requirements as a gym. Mr. Walker said it did not, the demand for manufacturing was much less.

In favor: none.

In opposition: none.

Code: Minor Site Plan review from Planning is required.

A motion to grant request #5 was made by Monahan with a condition that if a dumpster becomes present it needs to be screened, seconded by Wallner and passed by a unanimous vote.

Monahan had a question on request #5. Are they required to have a dumpster? Marshall asked if the Board could approve the request based on their statement that they would not have a dumpster. Walker read the Ordinance. Marshall asked about the calculation of parking and how Walker calculated it. Walker explained.

Requests #1 through 4: Marshall stated that the use is not a classic gym. They have put enough parking in. They will not be tearing up the property. It is the minimum impact.

Request #5: this is to keep trash from blowing around where there are dumpsters. Winters said that if they are just going to be loading they need some separation. Carley doesn't think the intent of the Ordinance requires it. Walker said that it can be conditioned that if a dumpster is added this requirement is met.

Decision: A motion to grant requests 1, 2, 3, 4 was made by Marshall, seconded by Wallner and passed by a unanimous vote.

**52-15 O'Reilly Auto Parts:** Applicant requests a Variance to Article 28-6-9 (a), Table of Maximum Sign Dimensions & (b), Permitted Building Signs to install a second building sign with an area of 69.57 square feet resulting in 2 building signs with a total combined area of 142 s.f. (+/-) where the maximum square footage allowed, based

on building frontage, is 111 s.f. for property located at 186 Fisherville Road in a CG General Commercial District.

Jim Cranster, represents Bowler Engineering and O'Reilly Auto Parts testified. He handed out a revision showing changes on sheet 2 of application.

The lot fronts on Fisherville Rd. It is a long narrow lot. The building is oriented to maximize use of the property. The zone allows up to 3 wall signs on a building which allows 1 sf per linear foot of the building. This building is 111 feet in length which allows 111 s.f. of wall signage. The proposal is for 2 wall signs. One wall sign is 72.28 s.f. The 2<sup>nd</sup> on the east elevation facing the street is 69.57 s.f. This is a total of about 142 s.f. of wall signage. The hardship is the lot configuration. Having a 2<sup>nd</sup> wall sign is needed to identify for passengers driving along Fisherville Road headed north – This is a safer design. The signage compliments the building. It is not overpowering. It will benefit public safety as passengers and motorists driving by can easily identify what is at that building.

Monahan asked if it was an existing building. Mr. Cranster said it was a vacant lot. Monahan asked if the only signage for the business is going to be on the building. Mr. Cranster said there would also be a ground sign, which is allowed and will be in place. Monahan stated that one of the observations they made is that a sign larger than allowed would make it easier for customers to see building, but wouldn't the ground sign address that. Mr. Cranster said that it would. The affixed signs are not overpowering and it fits with the building.

In favor: none.

In opposition: none.

Code: none.

Decision: A motion to approve the request was made by Marshall, seconded by Monahan and passed by a unanimous vote. The approval is due to the orientation of the building on the lot. A reasonable use would be to have a sign on the roadside as well as on the entrance to the building. The signage is of appropriate size and it is a minimum variance request.

Marshall stated that the lot does justify a sign on the front of the building out by the roadside. There is a value for having signage on the road. Walker stated that within the CG zone all parking is required to be on the side or rear of all buildings. Marshall asked if their front entrance would be on the side of the building. Walker said yes. He explained how he calculated the signage. Marshall feels it is appropriate for the size of the building.

#### MINUTES

A motion to approve the December 2015 Minutes was made by Wallner, seconded by Monahan and passed by a unanimous vote.

#### OTHER ITEMS

Walker brought information to the Board regarding Bills going before the Legislature. It reads that the ZBA will be required to make a specific determination on each one of the variance criteria. Walker's guess is that there are occasions when decisions are appealed and the Board has not necessarily commented on each of the 5 criteria and may only base their denial of the hardship issue.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT